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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Policy and Rules Concerning the )  
Interstate, Interexchange Marketplace )  
Implementation of Section 254(g) of the )  
Communications Act of 1934, as amended )

CC Docket No. 96-61  
Phase I

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AMERITECH REPLY

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## SUMMARY

The Commission has long held that a carrier's status as dominant or nondominant hinges on whether it has market power. Among the factors the Commission considers in determining whether a firm has market power are: the number and size distribution of competing firms, the nature of barriers to entry, the availability of reasonably substitutable services, and whether the firm controls "bottleneck facilities."

Ameritech's comments address each of these factors in detail. They show that as new entrants in the marketplace -- with no customers, no traffic, no revenues, no facilities, little, if any, name recognition, and no ability to exploit bottleneck control -- the BOCs are clearly nondominant in out-of-region services, regardless of whether they provide such services through a separate affiliate. In addition, Ameritech points out that a separate affiliate requirement for nondominant status would be inconsistent with the the 1996 Act, which directs the Commission to establish a "pro-competitive, deregulatory national policy framework," and which pointedly excludes out-of-region service from the list of services for which separate subsidiaries are required.

Those opposing elimination of the separate affiliate requirement essentially begin and end with one argument: that BOCs maintain market power in-region in local exchange and access services. From this one claim, they would have the Commission conclude that a host of onerous restrictions must be imposed on BOC out-of-region operations to prevent the BOCs from exercising market power in out-of-region services.

Significantly, none of these parties shows how a BOC could possibly control price in a marketplace that includes such global giants as AT&T, MCI, and Sprint. Nor do they show how, even assuming a BOC has market power in-region, that power could be transferred to its out-of-region services. Finally, none shows how the separation requirements and other conditions they propose can be reconciled with the clear language of the 1996 Act. That being the case, their arguments should be rejected, and the Commission should declare the BOCs nondominant without conditioning that status on separation requirements.

The Commission should also continue to treat the domestic, interstate, interexchange market as a single product market. The pervasive supply and demand elasticities that characterize that market will serve as a check on BOC prices, just as they check the prices of AT&T and the other incumbent carriers. Indeed, the whole issue of BOC market power in long-distance services is a red herring. It assumes that BOCs will continue to have market power in local exchange and access services, and that, notwithstanding the Commission's regulation of access services, this market power necessarily extends to its long-distance services. Neither assumption has merit.

Finally, the Commission must enforce the geographic rate averaging provisions of the 1996 Act as written. This means that any exceptions that the Commission may authorize pursuant to its forbearance authority must be limited in scope, and that states shall have responsibility for applying geographic rate averaging to intrastate rates.

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AMERITECH REPLY

I. INTRODUCTION

Ameritech respectfully submits this reply to comments on Sections IV, V, and VI of the Commission's Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding. As discussed below and in Ameritech's initial comments, the Commission should treat BOCs and LECs as nondominant in the provision of out-of-region services, regardless of whether they provide such services through a separate affiliate. In addition, the Commission should conclude that, while the Department of Justice/Federal Trade Commission Merger Guidelines (Merger Guidelines) provide a theoretically sound basis for defining product and geographic markets generally, particularly in access services, there is and will continue to be a single interstate, interexchange market even after BOC entry into that market. Finally, the Commission must implement the geographic rate averaging requirements of the Telecommunications Act of 1996 (the 1996 Act) in a manner consistent with the letter and intent of the law. This means the Commission may allow only limited exceptions to these requirements, although it must leave intrastate enforcement, in the first instance, to states.

## II. BACKGROUND

The Commission initiated this proceeding to revisit its regulatory regime for domestic, interstate, interexchange services in light of the passage of the Telecommunications Act of 1996 (the 1996 Act). The Commission notes that the 1996 Act "builds upon the progress made to date in facilitating competition in the domestic long-distance market, and provides a framework for raising competition to a higher plane"<sup>1</sup> It seeks comment on how its policies and rules should be changed to further these pro-competitive policies of the 1996 Act.

Because of the breadth of its proposals, the Commission divides this proceeding into two phases. In this phase (Phase I) the Commission seeks comment on three issues: (1) whether independent local exchange carriers (LECs) and Bell Operating Companies (BOCs) should be required to comply with the separate affiliate requirements of the Competitive Carrier Fifth Report<sup>2</sup> in order to be treated as nondominant in the provision of out-of-region services; (2) how to define product and geographic markets for interstate, interexchange services; and (3) how to implement the geographic rate averaging and integration provision of the 1996 Telecommunications Act (the 1996 Act). These issues are addressed, in turn, below.

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<sup>1</sup> Notice at 1, 3, and 16.

<sup>2</sup> Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Fifth Report and Order, 98 FCC 2d 1191 (1984) (Fifth Report).

III. BOC AND LEC OUT-OF-REGION SERVICES ARE  
NONDOMINANT REGARDLESS OF WHETHER THOSE  
SERVICES ARE PROVIDED THROUGH A SEPARATE AFFILIATE

The Commission has long held that a carrier's status as dominant or nondominant hinges on whether it has market power. The Commission has defined market power as the ability to control price in the marketplace. The Commission has stated "[t]his may entail setting price above competitive costs in order to earn supranormal profits, or setting price below competitive costs to forestall entry by new competitors or to eliminate existing competitors."<sup>3</sup>

Among the factors the Commission considers in determining whether a firm has market power are: the number and size distribution of competing firms, the nature of barriers to entry, the availability of reasonably substitutable services, and whether the firm controls "bottleneck facilities." With respect to this last criterion, the Commission has stated that control of bottleneck facilities exists "when a firm or group of firms has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants."<sup>4</sup>

In its comments, Ameritech addresses each of these factors in detail. It shows that as new entrants in the marketplace -- with no customers, no traffic, no revenues, no facilities, little name recognition, and no ability to exploit bottleneck control -- the BOCs are clearly nondominant in out-of-region services, regardless of whether they provide such services through a separate affiliate. In addition, Ameritech points out that a separate affiliate requirement for nondominant status

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<sup>3</sup> Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report, 85 FCC 2d 1, 20-21 (1980).

<sup>4</sup> Id.

would be inconsistent with the the 1996 Act, which directs the Commission to establish a "pro-competitive, deregulatory national policy framework," and which pointedly excludes out-of-region service from the list of services for which separate subsidiaries are required.

The other BOCs and USTA echo Ameritech's views. In addition, the Florida and Missouri Public Service Commissions support nondominant status without a separate affiliate requirement.

Other commenters, however, including, predictably, the BOCs' competitors, favor retention of separate affiliate requirements or, in some cases, even more draconian measures.<sup>5</sup> These parties argue that the characteristics of the long-distance market, including the size and strength of the incumbents in that market, are irrelevant to an assessment of whether BOCs could acquire and assert market power in that market. Their analysis essentially begins and ends with one argument: that BOCs maintain market power in-region in local exchange and access services. From this one claim, they would have the Commission conclude that a host of onerous restrictions must be imposed on BOC out-of-region operations to prevent the BOCs from exercising market power in out-of-region services.

Significantly, none of these parties shows how a BOC could possibly control price in a marketplace that includes such global giants as AT&T, MCI, and Sprint. Nor do they show how, even assuming a BOC has market power in-region, that

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<sup>5</sup> MCI, for example, never known for its temperance in the regulatory arena, favors full structural separation and dominant carrier treatment. See also Vanguard Cellular Systems, Inc. Comments; CompTel Comments; Telecommunications Resellers Association (TRA) Comments; AT&T Comments; LDDS Comments; Comments of Public Utilities Commission of Ohio (favoring some form of structural separation and, in some cases, additional restrictions).



power could be transferred to its out-of-region services. Finally, none shows how the separation requirements and other conditions they propose can be reconciled with the clear language of the 1996 Act. That being the case, their arguments should be rejected, and the Commission should declare the BOCs nondominant without conditions.<sup>6</sup>

A. BOCs Do Not Have Market Power in Out-of-Region Service

As discussed in this reply and in Ameritech's comments, there is no conceivable basis upon which the Commission could conclude the BOCs have market power in out-of-region services.<sup>7</sup> BOCs will be entering the out-of-region market with no customers, no traffic, no revenues, no facilities, and little or no name recognition. They will be competing against four carriers with global networks, millions of customers and billions of revenues, as well as hundreds of other carriers. Indeed, the BOCs will depend on these four carriers to handle their out-of-region traffic since the BOCs themselves own no transmission facilities

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<sup>6</sup> The Commission may only condition nondominant status upon a requirement, such as a separate affiliate requirement, if it can show that such requirement is necessary to prevent the exercise of market power. That is, in fact, why the Commission took pains, in declaring AT&T nondominant, to state that the commitments made by AT&T with respect to residential service pricing and resale were not relevant to the Commission's determination of whether AT&T is nondominant. See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427, released October 23, 1995, at para. 84. Ameritech believes that the Commission cannot possibly show that a separate affiliate requirement is necessary to prevent the exercise of market power in out-of-region services. That being the case, the Commission cannot link this requirement to nondominant status. If the Commission thinks the requirement is justified for other reasons, it should initiate a proceeding in which it proposes to mandate such a requirement on a stand-alone basis, and the proposal could be assessed in that context.

<sup>7</sup> AT&T boasts that "surveys consistently confirm the power of AT&T's brand. Anywhere between 30 and 60 percent of the people in the U.S. still think AT&T is their local phone company. . . . We now have about 60% of the long distance market in the U.S. That translates into a relationship with some 90 million customers and gives us an enormous opportunity as we extend the brand into new areas." "Keeping the Customers Satisfied," Remarks by Joseph P. Nacchio, Executive Vice President, AT&T Consumer and Small Business Division, to Morgan Stanley Conference, Feb. 13, 1996 (AT&T Remarks).

outside of their own regions. Given these facts, market power is simply not a possibility

Ameritech's competitors have no real answer to these arguments. They therefore either ignore them entirely or purport to dismiss them as irrelevant. MCI, for example, asserts that an examination of "such matters as the LECs' low interexchange market shares and the presence of established interexchange rivals are beside the point."<sup>8</sup> Likewise, LDDS, claims that "[w]hat the RBOCs repeatedly -- and incorrectly -- fail to recognize is the critical and inextricable link between market power in the local exchange and access markets, and market power in the long distance market."<sup>9</sup>

Contrary to the claims of these carriers, it is not the BOCs whose analysis is incomplete, but their own. It is ludicrous to suggest that the characteristics of a market, including the size and strength of its sellers, have no bearing on the ability of a new entrant to acquire and assert market power.

MCI nevertheless claims that if these factors were indeed relevant, the Commission would not have conditioned nondominant status for independent LECs on the establishment of a separate affiliate requirement or indicated that some level of separation might also be required of BOC interLATA operations. In both contexts, however, the Commission was considering the regulatory status of in-region, as well as out-of-region, long-distance services. Particularly, given that the

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<sup>8</sup> MCI Comments at 13, 19. AT&T suggests that the Commission should ignore evidence of market share, supply elasticities, and demand elasticities when assessing BOC market power in-region. AT&T Comments at 4-5, 12-13. This suggestion is discussed, infra.

<sup>9</sup> LDDS Comments, Attachment A (LDDS Reply in CC Docket No. 96-21) at 4.

Fifth Report was adopted in 1984 -- just as the divestiture was being implemented, when equal access was in its infancy, before price cap regulation had been adopted, and before structural requirements for enhanced services and customer premises equipment had been lifted -- it is hardly surprising that the Commission concluded that some level of separation might be necessary to prevent the exercise of market power in in-region services.

In fact, given the comparative positions of the BOCs and the incumbent long-distance carriers in long-distance services, it is difficult to imagine how a BOC could exercise market power -- i.e., control the market price -- in any long-distance service, much less in out-of-region services. It is therefore incumbent upon the Commission to drop its proposed, interim separate affiliate requirement and find the BOCs nondominant in the out-of-region marketplace.

B. BOCs Do Not Have the Ability to Exercise Market Power in Out-of-Region Services Through Discrimination and Cross-Subsidization

The sole argument of those who urge the Commission to retain the separate affiliate requirements or impose additional restrictions on the BOCs' provision of out-of-region long-distance service is that the BOCs could use so-called "bottleneck control" over in-region facilities to gain a marketplace advantage. Principally, they allege that the BOCs could discriminate against competing interexchange carriers and cross-subsidize their own long-distance operations.

As an initial matter, Ameritech disputes the assertion that it maintains bottleneck control over in-region facilities. While the BOCs' long-distance competitors use that phrase loosely, the Commission has defined "bottleneck

control" as "when a firm or group of firms has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants."<sup>10</sup> No BOC could possibly impede long-distance entry, even if it wanted to. Any such effort would be a blatant violation of its equal access obligations and/or the nondiscrimination provisions of the Communications Act and would surely be discovered and severely punished.

Moreover, to the extent any bottleneck control may have previously existed, the 1996 Act eliminates it. That Act eliminates both legal and economic barriers to local exchange competition. Through the requirements of section 251, the Act ensures that local exchange competition will develop quickly and on a sustainable basis. Not only are incumbent LECs required to provide interconnection, dialing parity, number portability, access to poles, conduits, etc., but also access to network elements and resale at wholesale rates. These latter two provisions are particularly significant because they enable competing LECs to enter the market rapidly and with little capital investment. Moreover, the BOCs have every incentive to implement these provisions as quickly as possible, since their ability to provide in-region interLATA service depends on it.

In any event, in the context of out-of-region services, discussions of bottleneck control are misplaced. While each BOC provides terminating access for a small percentage of all out-of-region calls, its overall role with respect to out-of-region traffic is relatively minimal. Even theoretical opportunities for mischief are few and far between; real opportunities are nonexistent. That being the case, an analysis of BOC market power in out-of-region services should resemble a

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<sup>10</sup> Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order, 85 FCC 2d 1 (1980).

traditional market power analysis, with emphasis on supply and demand elasticities, market share, and other, similar factors that are typically addressed in a market power analysis.

To be sure, the BOCs' long-distance competitors would have the Commission believe otherwise. Their tales of potential discrimination and cross-subsidization, however, are the stuff of fantasies. They bear no relation to reality.

### 1. Discrimination

A case in point is the assertion that BOCs could discriminate against their long-distance competitors by raising the price of access services or by tailoring access pricing to the needs of BOC out-of-region affiliates.<sup>11</sup> Apart from the fact that BOCs face growing competition from competitive access providers and have been fighting in regulatory arenas for the right to be more responsive to the needs of their customers to meet this competition, this argument is frivolous. For one thing, it ignores the fact that BOC access offerings are regulated as dominant carrier offerings by the Commission.<sup>12</sup> Interexchange carriers and competitive access providers have shown no reticence in challenging BOC access tariffs on the most inconsequential and technical of grounds. Surely unjust and unreasonable access prices or discriminatory access terms and conditions would not escape their notice or the notice of the Commission.

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<sup>11</sup> See, e.g., AT&T Comments at 24-25; MCI Comments at 7.

<sup>12</sup> Indeed, no one explains why, if BOCs have the ability to raise access prices above just and reasonable levels, they do not do so now.

In any event, even assuming *arguendo* that the BOCs could successfully discriminate in their pricing of access services, no one explains how regulating their long-distance rates or imposing separate subsidiary requirements would in any way address the problem. Finally, given that BOCs have no out-of-region facilities, and thus will provide out-of-region service on a resale basis, certainly initially, any increase in access charges would only increase their own out-of-pocket resale costs.<sup>13</sup>

Another case in point is the assertion that a BOC could discriminate in the quality of in-region access services it provides, and thereby damage the service and reputation of its out-of-region competitors. It is significant that while this assertion is oft-repeated in the comments,<sup>14</sup> no party explains exactly how such discrimination could occur.<sup>15</sup> No one explains, for example, what form this discrimination could take or how it might be effected, particularly given that BOC network equipment is fully automated. Nor does anyone explain how discrimination is possible, given that the BOCs will have to rely on the facilities of other carriers to provide service, at least in the foreseeable future.

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<sup>13</sup> The fact of the matter is that, if BOC entry into the long-distance business warrants any concern about input pricing, that concern should be directed at the comfortable oligopoly enjoyed by the large facilities-based long-distance carriers, not the BOCs. Those carriers have every incentive to increase BOC input costs, and whereas BOC access rates are closely regulated, the resale rates those carriers charge the BOCs are not. Moreover, whereas originating and terminating access each account for about 20% of revenues associated with interstate, interexchange traffic, the resale rates BOCs pay to facilities-based providers will account for a much higher percentage of BOC long-distance revenues and thus could have a much greater effect on the commercial viability of the BOC offering.

<sup>14</sup> CompTel Comments at 4; TRA Comments at 14; MCI Comments at 16.

<sup>15</sup> The only commenters that even purport to address this issue are MCI and TRA. The sum total of their explanation is as follows: "The interface between the IXC and the BOC at the terminating end of an interexchange call is becoming increasingly sophisticated, particularly with respect to signaling information. As a result, BOCs have the ability to discriminate in favor of their long distance operations in providing new interfaces at the terminating end of interexchange calls." MCI Comments at 17. See also TRA Comments at 15, which are virtually identical.

Likewise, no one explains how discrimination could occur on such a widescale basis as to "damage the service and reputation" of a long-distance company without that company being aware of such discrimination. All of the facilities-based long-distance companies have aggressive "vendor management" programs which regularly, and with great precision, record virtually every aspect of the access services provided to them. Any service degradation would immediately be detected by automatic test equipment and performance monitoring devices employed by these carriers. The notion that systematic discrimination that is apparent to consumers and thus damages a company's reputation and service could occur without a company being aware of it is patently absurd.<sup>16</sup>

Nor does anyone explain why, given that the BOCs are themselves seeking in-region long-distance authority, any BOC would possibly embark on such a foolish course in any event. And finally, no one explains how, if a BOC is intent on discriminating, a separate subsidiary requirement or dominant carrier regulation would prevent this from occurring anyway.

No one explains these matters, because there is no explanation. Scratch beneath the surface, and nothing's there, only empty rhetoric. In truth, commenters are not really concerned about discrimination at all. The real agenda of the long-distance industry is to handicap new entrants in the marketplace with onerous separate subsidiary requirements and other anticompetitive restrictions or, even worse, dominant carrier regulation. That's the agenda -- not preventing

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<sup>16</sup> Equally absurd is the notion, advanced by AT&T, that the BOCs could, without detection, systematically "bully" in-region customers into purchasing out-of-region service from the BOCs by threatening to provide inferior (or promising superior) local connections. AT&T Comments at 26.

discrimination -- and the Commission should not be fooled into thinking otherwise.

It is telling that the same arguments about discrimination were made with respect to BOC provision of enhanced services and customer premises equipment. Yet the Commission has noted that there is no evidence that any BOC has ever discriminated against a competing enhanced service provider (ESP).<sup>17</sup> Indeed, the Commission has observed that "the continuing vibrancy of the enhanced service market . . . appears to suggest that provision by the BOCs of enhanced services pursuant to nonstructural safeguards has not proved seriously detrimental to competition."<sup>18</sup> As the Commission recognized:

[t]he existence of well-established competing ESPs appears to make it more difficult for BOCs successfully to engage in access discrimination. As the California I court stated, the Commission could reasonably conclude that large competitors like IBM could be relied on to monitor the quality of access to the network, reducing the ability of BOCs to discriminate.<sup>19</sup>

Just as IBM can be relied on to ensure that no BOC discriminates in the provision of access to BOC services, there can be no doubt that AT&T, MCI, Sprint, and the other incumbent long-distance carriers can be relied upon to do the same.

In fact, Ameritech has made only modest inroads in the enhanced services marketplace, and its market share in enhanced services remains extremely small. Given that BOCs in general -- and Ameritech in particular -- have been providing

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<sup>17</sup> Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, FCC 95-48, released Feb. 21, 1995, at para. 29.

<sup>18</sup> Id.

<sup>19</sup> Id. at para. 33.



enhanced services in-region, on an integrated basis, and subject to full deregulation, without impeding competition, and certainly without acquiring market power in enhanced services, it is difficult to fathom arguments that the BOCs must be subject to full structural separation and other restrictions to prevent the exercise of market power in out-of-region long-distance services.

## 2. Cross-Subsidization

The other argument that is generally raised by those advocating so-called "safeguards" and/or dominant status is that the BOCs could cross-subsidize their provision of out-of-region service with "monopoly revenues" from the local bottleneck.<sup>20</sup> TRA, for example, asserts that "a cross-subsidy would occur anytime an LEC confers on its long distance operation a benefit derived from its monopoly local exchange activities without adequate compensation to the monopoly sector."<sup>21</sup> GSA claims that "LECs are in a position to extract monopoly prices from their subscribers if they can persuade their state regulators that the rates are justified by cost."<sup>22</sup> These parties and others argue that, in order to prevent cross-subsidization, the Commission should require BOCs to comply with separate affiliate requirements or even stricter structural separation requirements, such as those set forth in section 272 of the 1996 Act.

Significantly, of all the parties touting the risk of cross-subsidization, only one, MCI, acknowledges even the existence of price cap regulation. MCI, however,

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<sup>20</sup> MFS Comments at 9; GSA at 3; Vanguard Cellular Comments at 3-6; Alabama PSC at 5-7; MCI Comments at 22-26.

<sup>21</sup> TRA Comments at 16.

<sup>22</sup> GSA Comments at 3

dismisses its significance on the ground that some BOCs can elect a sharing option.<sup>23</sup> Apart from the fact that Ameritech has elected the no-sharing option, the Commission noted that, even with sharing, price caps "substantially curtail[] the economic incentive to engage in cross-subsidization."<sup>24</sup> Moreover, the Commission has recognized that a system of "pure" price caps, with no sharing of earnings, effectively eliminates any incentive for cost shifting."<sup>25</sup> That being the case, the Commission need not concern itself with cross-subsidization at all, at least by carriers subject to pure price caps, or other regimes that sever the connection between prices and rate-of-return.

As for other carriers, the Commission has long held that cost accounting is an effective tool to prevent cross-subsidization. Indeed, the Commission has so held even with respect to the provision of completely deregulated services. The Commission already has rules in place that require the BOCs to separately account for their interexchange costs. Specifically, the Part 69 rules already require the BOCs to identify interexchange costs and allocate them to a separate price cap basket. While these rules are more than adequate to ensure proper cost allocation, if the Commission believes otherwise, it can modify Part 64 to apply those rules to BOCs that are not subject to pure price caps in all jurisdictions.

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<sup>23</sup> MCI Comments at 25.

<sup>24</sup> See e.g., Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 2924 (1989). Likewise, the Florida PSC observes that "separation requirements have largely outlived their usefulness. In a rate base/rate of return regulated environment, there was good reason to be concerned about cost shifting. . . . If the LEC's "in-region" business is subject to price cap regulation at the interstate and intrastate levels, there is little opportunity to profit from cost shifting. Florida PSC Comments at 11.

<sup>25</sup> Price Cap Performance Review for Local Exchange Carriers, 10 FCC Rcd 8962 (1995) at para. 187.

C. There is No Need for Joint Marketing Restrictions

Some interexchange carriers ask the Commission to prohibit BOCs from jointly marketing in-region local and out-of-region long-distance services.<sup>26</sup> As an initial matter, Ameritech notes that, like the proposed separate affiliate requirement, such joint marketing restrictions would be inconsistent with the 1996 Act. Indeed, the Act permits BOCs not only to jointly market local and out-of-region service, but also local and in-region long-distance services, once in-region authority is received. Having failed to convince Congress to impose joint marketing restrictions, the long-distance industry should not achieve, through back-door conditions for nondominant status, the anticompetitive advantage they were unable to achieve in legislation.

Moreover, the suggested joint marketing limitation is wholly unnecessary. The number of customers to whom a BOC would be able to jointly market out-of-region long distance service and local exchange service will be minimal. Therefore, the proposed restriction has nothing to do with preventing the exercise of market power. Moreover, contrary to the assertion of those advocating joint marketing restrictions, the BOCs are at a competitive disadvantage in serving the out-of-region needs of their local exchange customer. That is because, until a BOC receives in-region interLATA relief, it cannot fully serve the needs of customers with in-region and out-of-region facilities. To use a BOC for out-of-region service, those customers would have to bifurcate their service between two carriers and forego the volume discounts and other efficiencies that concentrating their traffic would allow.

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<sup>26</sup> See, e.g., AT&T Comments at 7-8; CompTel Comments at 9-10.

In reality, the proposed joint marketing restrictions are nothing more than a stalking horse for similar arguments that will be made in the context of the BOCs' in-region regulatory status. Those advocating joint marketing restrictions are hoping the Commission will "box itself in" with respect to in-region joint marketing by limiting joint marketing in the out-of-region context. The long-distance industry is well-aware of the importance of joint marketing to a competitor's viability. As AT&T has stated:

[O]ur research shows that . . . about two out of three people will want to bundle long distance and local services. . . . Customers have always liked bundles. In fact, they've never really distinguished between local and long distance services. It's not a logical separation in their minds. It's only logical to regulators... Customers today are also telling us -- and anyone else who will listen -- that they want more than just local and long distance phone service combined. They want wireless, on-line, cable TV, and entertainment in their communications services bundles too. Our job is to develop the bundles of service they most want. And we'll do it by bringing the power of our brand to bundles. The right bundles strengthen our bonds with customers and increase retention rates. And, as new combinations of communications bundles become possible, the first company to satisfy people's needs for those bundles gains a great advantage. They establish a bond that even the promise of lower prices won't break.<sup>27</sup>

The Commission should not skew the marketplace and limit competition by denying BOCs the ability to use this important tool, particularly since its competitors have every intention of using it to full advantage.

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<sup>27</sup> AT&T Remarks, *supra*. See also "Interconnection, Unbundling, and Access: Creating Full Service Competition Under the Telecommunications Act of 1996," AT&T, MCI, LDDS WorldCom and CompTel, March 1996, at 1: "The recently enacted federal legislation has . . . brought the telecommunications market to a paradigm shift as significant as the divestiture of AT&T: the emergence of full service competition . . . [in which] most carriers will offer consumers a complete package of services, including local exchange service, exchange access service, and toll."

D. There is No Need for Special Rules  
on the Use of Customer Information

AT&T asks the Commission to condition nondominant status on the establishment of restrictions that prohibit the sharing of customer information between BOC local and out-of-region operations<sup>28</sup> or require BOCs to make any information given to its long-distance unit available on the same terms and conditions to other interexchange carriers.<sup>29</sup> The 1996 Act, however, addresses the treatment of customer proprietary network information in detail. It prescribes rules that are designed to protect customers' privacy and promote competitive fairness. Additional restrictions are not only unnecessary, but inconsistent with the Act.

Moreover, like most of the other alleged concerns, this is nothing more than a red herring. The BOCs will be entering the out-of-region marketplace with no customers. In contrast, the incumbent carriers have substantial embedded customer bases and they have information about the calling patterns of each of their customers, as well as their former customers. They have far more information about out-of-region customers than any BOC could possibly have. As AT&T acknowledges, "[w]e now have a database with information about nearly 75 million customers. We know their wants, needs, buying patterns, and preferences."<sup>30</sup> Thus, in regard to out-of-region service, any information a BOC might be able to obtain pales in comparison to what its competitors already have. There is no need for the Commission to step in here, particularly with asymmetric rules that uniquely burden entrants vis-a-vis the incumbents.

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<sup>28</sup> AT&T Comments at 7; TRA Comments at 21

<sup>29</sup> Cable and Wireless Comments at 4.

<sup>30</sup> AT&T Remarks, supra.

IV. There Continues to Be Only One, National Market for Interstate, Interexchange Services

In its comments, Ameritech endorsed the Commission's proposal to adopt the market definitions in the Merger Guidelines, but to refrain from applying these definitions absent evidence of market power in a particular region or for a particular service.<sup>31</sup> Ameritech disagreed, however, with the Commission's suggestion that BOC provision of in-region long-distance services might present justification for application of these guidelines.

There was broad consensus in the comments that the domestic interstate, interexchange marketplace is today a single, nationwide geographic market, although at least one party asserts that AT&T retains market power in that market.<sup>32</sup> There was division, however, as to whether BOC provision of in-region services will transform that single market into numerous, discrete geographic markets.

Perhaps the principal proponent of this view is AT&T. Reflecting the schizophrenia of a carrier concerned that it might itself be found to have market power in certain services, but seeking to saddle prospective new competitors with regulatory restrictions, AT&T tries to have it both ways. It argues, on the one hand, that the interstate, interexchange market is a single, nationwide market because

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<sup>31</sup> Under those guidelines, two products are in the same product market if a small, but significant and nontransitory increase in the price of one would cause enough buyers to shift their purchases to the other as to render the increase unprofitable. Likewise, two locations are in the same geographic market if a small but significant and nontransitory increase in the price of a product at one location one would cause enough buyers to shift their purchases of that product to the other location, so as to make the price increase unprofitable.

<sup>32</sup> See ACTA Comments at 3: "[T]he Commission should not rely on the existence of major rivals, like MCI and Sprint, or the eventual entrance of the BOCs, to provide effective safeguards against AT&T's ability to manipulate its array of weapons to dominate the whole spectrum of telecom services of today and tomorrow."

high supply and demand elasticities would preclude any carrier from exercising market power in the provision of any service in any area. Yet, at the same time, it argues that these same supply and demand elasticities would somehow become irrelevant if the BOCs provide long-distance.

Surely, if the "pervasive supply substitution," to which AT&T alludes, serves as a check on AT&T's prices, it would also serve as a check on BOC prices. In fact, the inconsistency in AT&T's argument underscores that the whole issue of BOC market power is misplaced: If AT&T is nondominant in long-distance services, so necessarily is every other interexchange carrier is, particularly a new entrant with no customers or facilities.

AT&T argues that traditional tools used to assess market power are ill-suited to measuring BOC market power because "direct proof of market power is present and indisputable."<sup>33</sup> But the market power to which AT&T refers is market power in local exchange services, not long-distance services. If it necessarily followed, as AT&T claims, that BOCs have market power in every service for which local or access services are "essential inputs," then BOCs would have market power in enhanced and cellular services, which is clearly not the case. Indeed, the Commission's decision to adopt a forbearance policy with respect to cellular services stands in stark contrast to AT&T's contention that BOCs have market power in any service for which access is a required input. Likewise, Sprint would have market power in long-distance services by virtue of its affiliation with United.

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<sup>33</sup> AT&T Comments at 8-9.

Clearly AT&T's argument is a gross oversimplification. Among other things, it ignores the fact that access services are regulated. These regulations ensure that access is provided on just, reasonable, and nondiscriminatory terms. In the final analysis, AT&T is engaging in mere regulatory gamesmanship. The whole issue of BOC market power is a red herring. It is being used as a pretext by AT&T and others to seek regulatory restrictions that would handicap the BOCs in the long-distance marketplace, or at least ensure that BOC long-distance operations derive no benefits or efficiencies from integrated operations.<sup>34</sup>

Of course, when the shoe was on the other foot, and AT&T itself was the target of such practices, AT&T had a different view. Responding to arguments that it enjoyed advantages in long-distance services because of its size, resources, scale economies, financial strength, and technical capabilities, AT&T replied: "[T]he whole point of competition is to encourage firms to develop 'advantages' and to exploit them by passing efficiencies on to consumers. The system of handicapping proposed by the competitors is the very opposite of competition, and can only harm consumers."<sup>35</sup> AT&T went on to argue: "All firms do not need to be equal in size, quality, and number of customers for a market to be competitive. . . . The issue for the Commission, therefore, is not to weigh and compare the different 'advantages' each carrier possesses, but to determine whether any of those advantages precludes the effective functioning of a competitive market."<sup>36</sup>

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<sup>34</sup> Hence, for example, the claim that BOCs should not be permitted to jointly market in-region and out-of-region services.

<sup>35</sup> Competition in the Interstate, Interexchange Marketplace, CC Docket No. 90-132, AT&T Reply at 5, September 18, 1990.

<sup>36</sup> Id. at 23.



Significantly, the Commission agreed with AT&T. It rejected the arguments of AT&T's competitors on the ground that any advantages AT&T had did not necessarily confer market power. The Commission said:

An incumbent firm in virtually any market will have certain advantages -- including, perhaps, resource advantages, scale economies, established relationships with suppliers, ready access to capital, etc. Such advantages do not, however, mean that these markets are not competitive, nor do they mean that it is appropriate for government regulators to deny the incumbent the efficiencies its size confers in order to make it easier for others to compete. Indeed, the competitive process itself is largely about trying to develop one's own advantages, and all firms need not be equal in all respects for this process to work.<sup>37</sup>

The Commission should take a similar approach here. Even assuming that BOC long-distance operations might be able to derive some benefit or efficiency from their LEC affiliations, it does not follow that such advantages are anticompetitive or anti-consumer or that they would confer market power. Indeed, as the Commission recognizes, incumbent carriers would have offsetting advantages, and especially in the case of AT&T, these advantages will dwarf any advantages that a BOC might possess.

Congress has already spoken as to the conditions governing BOC provision of interLATA services. Congress has determined that no special safeguards are necessary for out-of-region services, but that in-region services should be offered through structural separation requirements for at least three years. These are the terms on which BOCs should be permitted to offer interLATA services. The Commission should not impose additional restrictions through the guise of

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<sup>37</sup> Competition in the Interstate, Interexchange Marketplace, 6 FCC Rcd 5880 (1991) (AT&T Streamlining Order), paragraph 60.